

**ROBERT WHEELAND,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** ) **Case No. CIV-10-973-W**  
 )  
 **LAWTON CORRECTIONAL FACILITY,** )  
 )  
 **Defendant.** )

Plaintiff, a state prisoner, filed a civil rights complaint together with a motion for leave to proceed *in forma pauperis*. United States District Judge Lee R. West has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice.

By order of this Court dated September 9, 2010, the undersigned granted Plaintiff's motion to proceed *in forma pauperis*; however, Plaintiff was advised that in accordance with the provisions of 28 U.S.C. §1915(b) he would be required to pay the \$350 filing fee as set forth in that order, including an initial partial payment in the amount of \$4.05 due on or before September 30, 2010. Plaintiff was further advised that failure to comply with that order could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that as of this date, Plaintiff has not made such payment, requested an extension of time within which to pay, nor demonstrated good cause

for his failure to pay. Therefore, the undersigned recommends that this action be dismissed without prejudice to refiling. LCvR 3.4(a).

### **RECOMMENDATION**

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file objections to this Report and Recommendation with the Clerk of this Court by the 28<sup>th</sup> day of October, 2010, in accordance with 28 U.S.C. §636 and Local Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 8<sup>th</sup> day of October, 2010.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE